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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,343	12/22/2000	Moriyasu Shimojo	Q62338	1114

7590 11/27/2002
Sughrue Mion Zinn Macpeak & Seas
2100 Pennsylvania Avenue NW
Washington, DC 20037-3202

EXAMINER

WYROZEBSKI LEE, KATARZYNA I

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 11/27/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/720,343

Applicant(s)

SHIMOJO ET AL.

Examiner

Katarzyna W. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

In the light of the applicant's amendment, mailed on September 16, 2002 following final office action has been necessitated.

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sadatoshi (US 5,723,527).

The discussion of the prior art of Sadatoshi from paragraph 4 of the office action mailed on 3/15/2002 is incorporated here by reference.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadatoshi (US 5,723,527) in view of Kobayashi (US 5,880,198).

The discussion of the disclosure of the prior art of Sadatoshi and Kobayashi from paragraph 8 of the office action mailed on 3/15/2002 is incorporated here by reference.

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5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadatoshi (US 5,723,527) in view of Kobayashi (US 5,880,198) as applied to claims 1-4, 7-9 above, and further in view of Shimojo (US 6,011,102).

The discussion of the disclosure of the prior art of Sadatoshi, Kobayashi and Shimojo from paragraph 8 of the office action mailed on 3/15/2002 is incorporated here by reference.

In response to the office action mailed on 3/15/2002 the applicant has argued following:

a) The prior art of Sadatoshi discloses crystalline polypropylene, EBR, EOR and talc and can further contain rubber-comprising vinyl aromatic (col. 8, lines 44-55)

With respect to the above note, the examiner would like to point the applicant to its own claim, which contains term polypropylene-based resin. The limitation of polypropylene-based is so broad that it includes both polypropylene homopolymers and copolymers.

In addition, the specification of the prior art of Sadatoshi contains specific definition of the polypropylene polymer (col. 2) as ethylene-propylene copolymer. The homopolymer the prior art of Sadatoshi refers to is not something separate as the applicant indicates. It is part of the polymer, that has a specific Q-value, which in turn is the same Q-value required by the present invention. The pendant fraction of the polypropylene homopolymer is also in the same range as that of the present invention.

With respect to the addition of the rubber comprising vinyl aromatic compound, such is clearly disclosed in col. 8, to which the applicant refers to with one difference. The term "can" refers not to the fact that the vinyl aromatic containing rubber can be utilized, but to the method that can be used. The prior art of Sadatoshi discloses that the method that can be used comprises

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kneading kneading PP with talk and then adding EPR, EBR and vinyl aromatic compound containing rubber. The prior art of Sadatoshi therefore clearly discloses use of vinyl aromatic containing rubber.

b) The applicant discusses the examples of the reference examples of the prior art of Sadatoshi, where examples 1-3 satisfy conditions a and b and where examples 4 and 5 do not satisfy conditions a and b.

With respect to the above argument, it should be pointed out, that a disclosure in a reference is not limited to its specific illustrative examples but must be considered as a whole to ascertain the teachings of the prior art.

c) The components utilized in the comparative results do not exhibit satisfactory performance and refers the examiners to the unexpected results in on page 54 (Table 6) of the present invention.

With respect to the data in Table 6, the examiner does not consider the results as those that would clearly point the differences between the present invention and the prior art for the following reasons:

- 1) How subjective is the term “good”, “bad” and what is the meaning of “-“?
- 2) The examples in the comparative data of the present invention and not reflective of the composition of the prior art.
- 3) Even if, the comparative data somehow reflected the composition of the prior art, there are too many variables, which are not kept constant and different rubber components are utilized

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for the prior art examples that those of the present invention (especially the vinyl-aromatic compound containing rubber).

It should also be pointed out, that the unexpected results cannot overcome rejection under 102(b).

d) The prior art of Sadatoshi fails to teach, suggest or appreciate the advantages of vinyl-aromatic containing rubber.

With respect to the above argument, the presence of vinyl aromatic-containing rubber was discussed above.

e) The prior art of Kobayashi does not remedy the deficiencies of the prior art of Sadatoshi.

The prior art of Sadatoshi has not been overcome and it does anticipate the present invention. The prior art of Kobayashi was utilized not to remedy independent claims but dependent claims reciting octane alpha-olefin.

f) The prior art of Shimojo does not teach the selection of the elastomer of the present invention.

With respect to the above argument, the prior art of Shimojo was utilized to provide the amount of ethylene-octene rubber and not that of vinyl-aromatic rubber.

g) The combination of neither prior art reference teaches or suggests the present invention.

With respect to the above argument, examiners position has been clearly re-stated and the prior art rejection has not been withdrawn.

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It is also examiner's position that with respect to the combination of references, the applicant stated basically that the secondary references do not teach the present invention. In fact that is the reason why they are secondary references. The applicant has not established why it would not have been *prima facie* obvious to combine the references of record.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katarzyna W. Lee whose telephone number is (703) 306-5875. The examiner can normally be reached on Mon-Thurs 6:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the

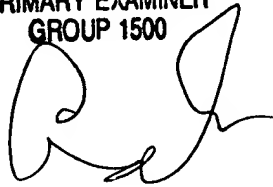
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organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

KIWL
November 20, 2002

**EDWARD J. CAIN
PRIMARY EXAMINER
GROUP 1500**

A handwritten signature in black ink, appearing to be 'EJ Cain', written over the printed name and title.